

Persons who permanently affix tangible personal property to real estate act as construction contractors and incur Use Tax liability on their cost price of tangible personal property they physically incorporate into realty. See 86 Ill. Adm. Code 130.1940. (This is a GIL).

October 26, 2000

Dear Mr. Xxxxx:

This letter is in response to your letter dated June 30, 2000 that we received in our office on July 27, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I am writing this letter to request a written ruling regarding our handling of sales/use tax in your state.

COMPANY is an electrical contractor that many times acts as a retailer. I understand in most states the tax on anything installed, that becomes part of real property, is taxable to the contractor. However, we install a lot of material that retains its status as tangible personal property, which is taxable to our customer. Sometimes the same type of material may be real property in one part of the job and tangible personal property in another part of a job. It is many times difficult to tell when purchasing material whether it will become part of real property or whether it will remain tangible personal property.

This creates a lot of confusion on the part of our vendors. They must continually monitor which purchases are exempt and which are taxable. We feel this problem can be resolved most effectively by allowing our company to purchase all materials exempt from tax. We would monitor and pay directly to the state any applicable use tax on materials that we use or install becoming part of real property.

Our home state of Iowa allows this. We are not sure how to interpret the rules of your state or whether you would allow an exception for our situation. We would appreciate your consideration of our situation and acceptance of our recommendation. Please respond in writing if possible so that we can have documentation for our records.

Thank you very much for your help. If you have any questions, please contact me at #####.

Please be advised persons who take tangible personal property and permanently affix it to real estate in Illinois act as construction contractors and incur Use Tax liability on their cost price of tangible personal property they physically incorporate into realty. They owe Use Tax because they are considered the end users of the materials they take off the market to permanently affix to real estate, G. S. Lyon & Sons Lumber & Mfg. Co. v. Department of Revenue, 23 Ill.2d 180 (1961).

Construction contractors act as retailers and incur Retailers' Occupation Tax liabilities when they sell items over-the-counter or they sell items that remain tangible personal property when installed. When contractors act both as contractors and retailers of building materials, they can give a certification to suppliers that they, the contractors, will self-assess and pay tax if they do not know at the time of purchase how they will use the tangible personal property. Please refer to 86 Ill. Adm. Code 130.2075(b)(1) and (2), enclosed.

Please note Section 130.2075(b)(2) explains that "the purchaser may not give such certification to his supplier unless the purchaser, if he will convert the tangible personal property into real estate in this State, agrees to, and does, assume the liability for reporting and paying the tax to the Department in the same form (Illinois Retailers' Occupation Tax, and local Retailers' Occupation Tax if applicable) in which the supplier would have reported and paid such tax if the supplier had accounted for the tax to the Department." Therefore if the purchaser converts the tangible personal property into real estate, he must include its cost price on his sales tax return as taxable receipts and pay applicable local Retailers' Occupation Tax in addition to the State Retailers' Occupation Tax.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz  
Associate Counsel

KWB:msk  
Enc.